

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6399 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SAVITABEN GAJAJI THAKOR W/O DETENU GAJAJI MAGANJI THAKOR

Versus

DISTRICT MAGISTRATE

Appearance:

MR NM KAPADIA for Petitioner
Mr. Samir Dave, A.G.P. for the Respondent Nos. 1, 3 & 4
Ms. Parinda J. Davawala for the respondent no. 2.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. N.M. Kapadia for
the petitioner, learned A.G.P. Mr. Samir Dave for the
respondents nos. 1, 3 and 4 and Ms. Parinda J. Davawala
for the respondent no. 2.

1. The petitioner who is the wife of detenu-Gajaji
Mangaji Thakor has filed the present petition under

Article 226 of the Constitution challenging the detention order dated 26-5-1999 passed against the detenu by the District Magistrate, Ahmedabad in exercise of powers conferred under Section 3(2) of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (" PBM Act " for short).

2. That the grounds of detention produced vide Annexure "C" disclose that the petitioner was found in illegal possession of 1600 litres of blue kerosene in eight different barrels stored at godown situated at Rakhial, Saraspur, Ahmedabad. Over and above that 200 litres of kerosene was also found in a separate vessel on which name of one Fulchand Shantilal was written. That on further inquiry 1600 litres of kerosene was found to be illegally acquired by the petitioner without any pass or permit. It was also found that the petitioner has been selling the said kerosene at higher rate and making illegal profit out of the same. The District Magistrate having construed the material placed before him has observed that the petitioner has not only committed breach of condition no.3 of Gujarat Essential Commodities(Licensing Control & Declaration of Stock) Order, 1981 but has also committed an offence under Section 3 of the Essential Commodities Act, 1955. The detaining authority also observed that the petitioner has been indulging in acquiring illegal quantity of essential articles and making undue profit by selling the same at higher rate in the market. That the penal provisions of Essential Commodities Act are insufficient to prevent the above stated illegal activities of the detenu which is prejudicially affecting the supply of essential commodity in the society, and thereby, the impugned order is passed.

3. Learned Advocate Mr. Kapadia has assailed the impugned order on numerous grounds. It is contended that the District Magistrate, Ahmedabad as detaining authority has construed the material placed before him including the fact that in the year 1992 the detenu was caught red handed while transporting kerosene illegally through loading rickshaw no.GTH 7636, and as such, he has been habitually indulging in such activity.

4. The petitioner has averred in the petition that in respect to the incident of 1992 narrated in the grounds of detention, criminal case has been filed in the Court of the Special Judge, City Sessions Court, Ahmedabad bearing no.150/1992. That on recording evidence, the detenu was acquitted in the said case. However, the factum in respect to acquittal and the

judgment delivered in the said criminal case no.150/92 by a Special Judge was not placed before the District Magistrate when he construed the material while passing the impugned order. It is submitted that the said material being favourable to the detenu might have tilted the balance in favour of the detenu, and as such, non consideration of said vital fact by the detaining authority has vitiated the subjective satisfaction rendering the impugned order bad in law. To support the said submission Mr. Kapadia has referred to and relied on the observation made by the Supreme Court in the matter of DHARAMDAS SHANTILAL AGARWAL VS. POLICE COMMISSIONER & ANR. (AIR 1989 SC 1282) wherein the apex Court while considering the scope of subjective satisfaction required to be reached under Section 3 of "PBM Act" has made following material and relevant observation at para 12 which reads as under:

" Where at the time when the detaining authority passed the detention order this vital fact, namely, the acquittals of the detenu in case Nos. mentioned at serial nos.2 and 3 have not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases were pending. The explanation given by the learned counsel for the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non placing of the material fact, namely, the acquittal of detenu in the above-said two cases resulting in non-application of mind of the detaining authority to the said fact has vitiated the requisite subjective satisfaction rendering the impugned detention order invalid."

5. That according to the above stated discussion, in the instant case, the detaining authority having failed to consider the vital fact regarding acquittal of the detenu in a Criminal Case bearing no.150/92 decided by a Special Judge, City Sessions Court, Ahmedabad has rendered the impugned order illegal, and as such, the same deserves to be quashed and set aside.

6. As a result of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 26-5-1999 passed by the District Magistrate, Ahmedabad against the detenu is hereby quashed and set aside. The detenu- Gajaji Maganji Thakor is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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